

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-36566-cgm

4 - - - - - x

5 In the Matter of:

6  
7 SEAN M. DUNN,

8  
9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 355 Main Street

13 Poughkeepsie, NY 12601

14  
15 April 2, 2024

16 10:12 AM

17  
18  
19  
20  
21 B E F O R E :

22 HON CECELIA G. MORRIS

23 U.S. BANKRUPTCY JUDGE

24  
25 ECRO: UNKNOWN

1 HEARING re Doc# 96 Motion to Reopen Chapter 7 Case filed by  
2 Carlos J. Cuevas on behalf of Sean M. Dunn with hearing to  
3 be held on 4/2/2024 at 09:00 AM at Videoconference  
4 (ZoomGov) (CGM) Responses due by 3/26/2024,. (Attachments: #  
5 1 Exhibit A # 2 Exhibit B # 3 Declaration of David T. Azrin,  
6 Esq. # 4 Azrin Ex. 1 # 5 Azrin Ex. 2 # 6 Azrin Ex. 3 # 7  
7 Azrin Ex. 4 # 8 Azrin Ex. 5 # 9 Azrin Ex. 6 # 10 Azrin Ex. 7  
8 # 11 Azrin Ex. 8 # 12 Notice of Hearing # 13 Proposed Order)

9  
10 HEARING re Doc# 99 Reply to Motion to Reopen Bankruptcy Case  
11 (related document(s)96) filed by Carlos J. Cuevas on behalf  
12 of Sean M. Dunn. (Attachments: # 1 Exhibit A-Order Approving  
13 Settlement) (Cuevas, Carlos)

14  
15 HEARING re Doc# 98 Objection to Motion to Reopen filed by  
16 Michael Robert Gordon on behalf of LAK3, LLC.

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21  
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24  
25 Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

LAW OFFICE OF CARLOS J. CUEVAS

Attorneys for Sean M. Dunn

1250 Central Part Avenue

Yonkers, NY 10704

BY: CARLOS J. CUEVAS

FRED STEVENS, Pro Se as Trustee

ALSO PRESENT:

DAVID T. AZRIN

JEFFREY CHUBAK

MICHAEL ROBERT GORDON

AVERY SAMET

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P R O C E E D I N G S

THE COURT: 18-36566 Sean Dunn.

MR. CUEVAS: Good morning, Your Honor. Carlos Cuevas for the debtor and movant.

MR. GORDON: Good morning, Your Honor. Michael Gordon of Gordon Law LLP for LAK3, LLC.

THE COURT: This is your motion, Mr. Cuevas.

MR. CUEVAS: Yes, Your Honor. Your Honor, approximately two years ago there was a settlement here among Gerald Dunn, Sean Dunn, and LAK3. A component of that settlement was that 1099 forms issued by LAK3 would be expunged. Unfortunately, Your Honor, two LAK3 forms were expunged, but there is a remaining third form for 2019. LAK3 has disputed that it issued -- ever issued the 2019 Form. But Your Honor, all the information on that 2019 Form is correct. And the transcript -- the tax transcript in question says that it was issued by LAK3.

So at -- during the last two years, Your Honor, we have diligently tried to reach a (indiscernible) resolution regarding the correction of this bogus 2019 1099 Form, but we have been unable to reach a resolution with LAK3. And that's why this (indiscernible) to reopen either have a contempt motion or an order directing LAK3 to take remedial action to rectify the bogus 1099 Form, which is in excess of \$322,000.

1           LAK3 has raised a jurisdictional objection to the  
2 motion stating that you lack subject matter jurisdiction to  
3 adjudicate this motion. Your Honor, given the case law in  
4 the Second Circuit, we think that LAK3 is incorrect because  
5 only you have the authority to enforce your own order. And  
6 that is consistent with Taggert and the (Indiscernible)  
7 case. So in terms of jurisdiction, Your Honor, we think  
8 you're the only court that has the authority to enforce Your  
9 Honor's own order.

10           And the -- my last point is, Your Honor, that my  
11 client's fresh start has been equally endangered because of  
12 this pending tax liability, which is in excess of \$80,000.  
13 So there is a valid reason to reopen the case either to hold  
14 LAK3 in contempt or to have a supplemental order issued  
15 directing LAK3 to take remedial action to rectify the bogus  
16 1099 Form. Because, Your Honor, if LAK3 is correct that it  
17 did not issue the bogus 1099 Form, then it would have  
18 incentive to prevent a fraudulent document being filed with  
19 the IRS. Thank you for your time, Your Honor.

20           THE COURT: Mr. Gordon?

21           MR. GORDON: Thank you, Your Honor. I just would  
22 also note that my co-counsel Avery Samet is also here online  
23 this morning also on behalf of LAK3. I'm not really sure,  
24 Your Honor, why Mr. Cuevas has brought this matter before  
25 Your Honor. I agree with him that two years ago LAK3 and

1 Mr. Dunn, and also Mr. -- his brother, who is his business  
2 partner, entered into a written settlement agreement to  
3 resolve a state court litigation that Your Honor  
4 (indiscernible) during the pendency of this case following a  
5 lift-stay order.

6 And that settlement agreement contains a mandatory  
7 form collection clause directing the parties to Westchester  
8 Supreme for any disputes arising under the settlement  
9 agreement. And Mr. Dunn's claim is, as Mr. Cuevas has  
10 stated, is that in his view, LAK3 has not complied with its  
11 obligation to withdraw -- that's the language used in the  
12 settlement agreement -- 1099.

13 As Mr. Cuevas also said and I also agree with,  
14 LAK3 did not -- it withdrew the 1099s for tax years 2016 and  
15 2017, but it can't withdraw something that it never issued.  
16 And for the past 11 months or so, I have been trying to  
17 explain to and work with Mr. Cuevas' co-counsel, another  
18 lawyer for Mr. Dunn, explaining that there simply was no  
19 1099 ever issued.

20 I would note that Mr. Cuevas doesn't present such  
21 a 1099. It has never been presented in the past 11 months.  
22 We have urged counsel to go to the IRS -- Mr. Dunn's counsel  
23 to go to the IRS and address the issue. In fact, Mr. Dunn's  
24 brother Gerald, who is also a party to this settlement  
25 agreement, did exactly that and was able to secure a

1 correction to what the IRS acknowledged was a mistake in his  
2 tax transcript.

3 But the main point, frankly, is if Mr. Dunn, Mr.  
4 Sean Dunn wishes to really press this issue notwithstanding  
5 all of the evidence that we presented (indiscernible) does  
6 exist, he's free to do it. But he's got to do it in the  
7 court that he agreed he would go to. And that is Supreme  
8 Court State of New York Westchester County. The cases that  
9 we've cited (indiscernible), there's no dispute in Mr.  
10 Cuevas' reply that the settlement agreement (indiscernible)  
11 selection clause is mandatory.

12 And there should be no dispute that when you have  
13 a situation like this where a party allegedly hasn't  
14 complied with the settlement agreement, that whose terms are  
15 not explicitly incorporated into an order, it's a breach of  
16 contract claim like any other breach of contract claim. And  
17 as the cases that we cite point out, if you want to press  
18 the issue that you want to address, then you go to state  
19 court to raise that issue.

20 And so we would ask that Your Honor deny the  
21 motion to reopen on the ground that (indiscernible) does not  
22 have jurisdiction under any circumstance, and frankly,  
23 there's an available -- a remedy available in court to  
24 direct jurisdiction. It has jurisdiction over this matter,  
25 and that's where this issue should be heard.

1 THE COURT: Response (indiscernible)?

2 MR. CUEVAS: Your Honor, may I be briefly heard in  
3 rebuttal?

4 THE COURT: Please.

5 MR. CUEVAS: Your Honor, the settlement order  
6 expressly incorporates the terms of the proposed settlement,  
7 and it's counter-intuitive that you could approve a  
8 settlement and not approve the terms of the settlement in  
9 your order. And it's counter-intuitive to posit that you  
10 could not enforce your own settlement order in your own  
11 court, and that you could be deprived of subject matter  
12 jurisdiction.

13 Because then in essence, the settlement would be a  
14 nullity because it could never be enforced. So Your Honor,  
15 in essence, we're just asking you to enforce the order and,  
16 in addition, we're asking you to use your authority under  
17 105(a) to ensure that Mr. Dunn's fresh start is not impeded  
18 by this bogus 1099. Thank you, Your Honor.

19 MR. GORDON: Your Honor, just a quick word?

20 THE COURT: Yes, sir.

21 MR. GORDON: Thank you. The order approving the  
22 settlement agreement does not -- and perhaps Mr. Cuevas  
23 doesn't have it handy, but I think it does not incorporate  
24 the terms of the settlement agreement. It simply provides  
25 that the stipulation attached as Exhibit A is hereby so



1 ordered. And as we pointed out in Paragraph 70 of our  
2 objection, Judge Wiles noted appropriate that, "The so  
3 ordering of the stipulation ordinarily means that at least  
4 some of the terms of the -- some of the approved terms of  
5 your agreements, of directions, courts should be wary of  
6 treating the (indiscernible) of the words "so ordered" as  
7 those it may automatically mean that each and every act of  
8 the party (indiscernible) has been changed into something  
9 that is not by the court mandated."

10 It's not that he doesn't have relief. It not that  
11 he doesn't have an avenue to raise this claim. It's not  
12 this court, and it certainly is not contempt. And there are  
13 countless cases that make that point that there was an issue  
14 with compliance with the settlement agreement. That's the  
15 state court (indiscernible) matter, and it should be  
16 directed to Westchester Supreme. And if they wish to raise  
17 it there, they're free to do so.

18 THE COURT: Very good.

19 MR. GORDON: Your Honor, may I have one moment  
20 just to address the last comment?

21 THE COURT: A quick one.

22 MR. GORDON: Your Honor, if you look at Page 2 of  
23 your order, it states, "Ordered that the stipulation  
24 attached as Exhibit A (indiscernible) among Sean M. Dunn  
25 (indiscernible) and Gerald Dunn is hereby so ordered."

1 THE COURT: Very good.

2 MR. GORDON: And it is clear that the order  
3 incorporates the stipulation --

4 THE COURT: Very good.

5 MR. GORDON: -- and it's part of the order.

6 THE COURT: The Court will take a quick recess.

7 BAILIFF: All rise.

8 MR. GORDON: Thank you, Your Honor.

9 MR. CUEVAS: Thank you.

10 (Recess)

11 THE COURT: Very good. Thank you. We're back on  
12 the record. Hold on just a second.

13 AUTOMATED VOICE: Recording in progress.

14 THE COURT: The bankruptcy court has subject  
15 matter jurisdiction pursuant to 28 --

16 AUTOMATED VOICE: Recording stopped.

17 THE COURT: Give us a second.

18 CLERK: (Inaudible).

19 THE COURT: Am I --

20 AUTOMATED VOICE: Recording in progress.

21 THE COURT: Can I be heard? Do you hear me, Mr.  
22 Cuevas and Mr. Gordon? You have to unmute the courtroom.  
23 Mr. Cuevas and Mr. Gordon, do you hear me?

24 MR. CUEVAS: Yes, Your Honor.

25 THE COURT: Very good.

1 MR. GORDON: Yes, Your Honor.

2 THE COURT: Thank you. I was on mute, and it's  
3 rather complicated when I'm in the courtroom. The  
4 bankruptcy court has subject matter jurisdiction pursuant to  
5 28 U.S.C. 134, 1334(a), and 157(a). And the amended  
6 standing order of reference signed by Chief Judge Loretta  
7 Prescott dated January the 31st, 2012 in -- to hear motions  
8 for contempt even In re Eppolito, 583 B.R. 822 (SDNY Bankr.  
9 2018). Courts have inherent power to enforce compliance  
10 with their lawful orders through civil contempt. And that's  
11 MH Global, 563 B.R. 4. And we're not at that stage now.  
12 We're simply at the stage to reopen the case.

13 Bankruptcy courts retain jurisdiction to enforce  
14 their own orders. In re Millenium Seacarriers Inc., 419  
15 F.3d 83 (2d Cir. 2005). This power derives from the  
16 inherent power of the court along with 11 U.S.C. 105 and 28  
17 U.S.C. 1. I didn't realize you couldn't see me either.  
18 There we go. The power derives from the inherent -- this  
19 power derives from the inherent power of the court along  
20 with 11 U.S.C. 105 and 28 U.S.C. 157, In re Residential  
21 Capital, LLC, 571 B.R. 581 (S.D.N.Y. 2017). Also see  
22 Maritime Asbestosis Legal Clinic v. LTB Steel, In re  
23 Chateaugay, 920 F.2d 183 (2d Cir. 1990).

24 A case may be reopened on the motion of the debtor  
25 pursuant to 350(b) of the Code. That's Bankruptcy --

1 Federal Bankruptcy Rule 5010. Section 350(b) permits the  
2 bankruptcy court to reopen the case to administer assets to  
3 accord relief to the debtor or for other causes. 11 U.S.C.  
4 359(b), *In re Wilson*, 492 B.R. 691 (Bankr. S.D.N.Y. 2013).

5 In deciding whether to reopen a case under 350(b),  
6 courts may consider equitable concerns and all to emphasize  
7 substance over technical consideration. *Baston v.*  
8 *Emmerling*, 223 B.R. 860. That's the 2nd Circuit B.A.P.  
9 1997, which was quoting Collier's Paragraph 350.03 in --  
10 which was the 1996. Courts will also consider the benefits  
11 to the debtor, the prejudice to the affected entity, and the  
12 benefits to the creditor. *In re Koch*, 229 B.R. 78 (E.D.N.Y.  
13 1999).

14 Section 350(b) does not limit the time to make the  
15 motion to reopen. *In re Arana*, 453 B.R. 161, an Eastern  
16 District of New York case, 2011. In this case, Creditor's  
17 argument that this Court lacks subject matter jurisdiction  
18 is without merit. As this Court retains jurisdiction to  
19 enforce its own orders, including the enforcement of  
20 settlement orders. And I respect Judge Wiles greatly. We  
21 have possibly a different set of circumstances here. *In re*  
22 *Residential Capital, LLC*, 571 B.R. 581 (S.D.N.Y. 2017) and  
23 again *Chateaugay*.

24 This Court also has the inherent power to enforce  
25 compliance with its orders through civil contempt. We're

1 not at that stage yet. We're simply reopening the case.  
2 Debtor continued to resolve Creditor's failure to comply  
3 with the settlement order without judicial intervention for  
4 two years, and reopening the case would allow the Debtor the  
5 ability to prosecute any kind of motions it sees fit for  
6 failure to comply with the settlement order.

7 This constitutes cause to reopen the matter under  
8 Section 550(b) as a failure to withdraw the 1099 creates a  
9 tax liability for the Debtor. That's 11 U.S.C. 350(b). You  
10 can also see again Baston. I will grant the motion. Mr.  
11 Cuevas, submit an order.

12 MR. CUEVAS: Thank you very much, Your Honor.

13 THE COURT: Thank you.

14 MR. CUEVAS: Yep.

15 (Whereupon these proceedings were concluded at  
16 10:35 AM)

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I N D E X

RULINGS

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Motion granted		13	10

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink and is positioned above the printed name.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: April 16, 2024

<b>0</b>	<b>1997</b> 12:9	<b>4</b>	<b>99</b> 2:10
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